

Victim Compensation
and Government Claims Board

630 K Street
Sacramento, California 95814
(916) 324-8987
www.vcgcb.ca.gov

Revenue Recovery and Accounting Division

FINAL REPORT TO THE

LEGISLATURE:

JUDGES' PILOT PROGRAM

1 Introduction

On September 14, 1998, Senate Bill 2021 (Chapter 451, Statutes of 1998) was enacted, which added Section 1202.41 to the Penal Code. This statute established a four-year pilot program between the Victim Compensation and Government Claims Board (formerly known as the State Board of Control) and Alameda, Sacramento, and San Diego Counties to collaborate with judges to amend restitution orders for offenders whose victims had received compensation from the Board. The specific intent of the pilot program was for each county to develop an effective process to amend restitution orders for victims whose losses were determined after an offender had been sentenced, thereby holding the offender financially accountable for his/her actions.

The Board submitted the required preliminary report on the pilot program to the Legislature in May 2000. The preliminary report reflected the counties' progress toward meeting the goal of the legislation after the first two years of the pilot. The statute requires the Board to prepare a final report no later than two years and 180 days after the conclusion of the pilot. Accordingly, the Board is pleased to submit this final report to the Legislature, which highlights the successes of the four-year pilot program.

2 Background

The Victim Compensation and Government Claims Board (Board) administers the state's Victim Compensation Program (VCP), which reimburses victims of violent crime for specific economic losses incurred as a result of crime. Statute requires the court to impose restitution on behalf of the Board when an offender is convicted and the victim has received benefits from the VCP. If the victim's losses are unknown at the time of sentencing, statute requires that the restitution order include a provision that the amount shall be determined at the direction of the court. These orders have come to be known as *To Be Determined* (TBD) restitution orders.

The concept of the TBD order is very important to the Board. With some exceptions, a victim has one year to file a claim with the VCP. Because offenders typically move so quickly through the criminal justice process, in many cases the VCP has not paid benefits on a victim's behalf until well after the

offender has been sentenced, and many victims' losses are not fully realized for several months to several years after the incident. Although the concept of the TBD order is in statute, many courts are hesitant to modify TBD orders for a variety of reasons, some of which are described below.

- Some counties have procedures in place for modifying restitution orders for offenders placed on formal probation, but have no processes for offenders who may be sentenced to state prisons or informal probation.
- In the past, there were no clear guidelines for modifying restitution orders; judges were less willing to impose the TBD orders because there was a concern that they were imposing orders that would never be acted upon or amended. To address these issues as well as others, the Center for Judicial Education and Research (CJER), in conjunction with the Judicial Council and the Board, prepared and distributed a judicial benchguide focusing on restitution.
- Judges have voiced concern over jurisdictional issues involved with transporting offenders from the California Department of Corrections (CDC) institutions to the courts for the purposes of modifying orders, as well as the issue of restitution hearings, because of their complexity and the due process rights of the offender.
- Policy questions have been raised regarding how often the TBD orders can be amended and what timeframes are involved for amending them.

To address the need for creating a streamlined process for amending the TBD orders for all offenders and to answer these policy questions, the Board approached the Judicial Council to discuss the concept of working with the courts on this issue. In coordination with the Judicial Council, the Board proposed the pilot program in three counties: Alameda, Sacramento, and San Diego.

Each county formed a pilot program task force comprised of members of the criminal justice community who handle restitution issues on a daily basis. Members of the task force in each county included representatives from the Courts; the District Attorney's Office; the Probation Department; the Public Defender's Office; court administration and revenue/collection offices, the Board, the California Department of Corrections, and the California Youth Authority.

Although each county took a different approach to implementing the pilot program, there were similarities. In every county, the task force meetings revealed that administering the TBD orders was not the only restitution-related issue that needed to be addressed. Each county expanded the pilot program scope to include a systemic review of the county's entire restitution program for

all victims. One of the many positive outcomes of the task force was the information sharing that occurred. The collaborative meetings brought together the representatives on a regular basis and provided a consistent forum to identify each entity's role and responsibilities in administering restitution in its county.

The ultimate goal of this pilot was for each county to establish a streamlined administrative procedure for the modification of TBD restitution orders. This final report documents the successes and differences of these counties in meeting this goal.

Alameda County

The pilot program was a great success for Alameda County. At the beginning of the pilot, the Presiding Judge of the Superior Courts, Judge Sarkisian, formed a committee composed of judges from the various court locations and representatives from the District Attorney's Office, the Probation Department, and the Public Defender's Office. In addition to discussing TBD order modifications, the committee identified four other issues: 1) automation; 2) restitution training of court clerks and other staff; 3) disbursement of monies collected from offenders; and 4) development of uniform procedures for modifying and enforcing all restitution orders. The county's existing criminal offender computer system did not contain fields for complete restitution fine/order information. Therefore data regarding fine and order imposition was incomplete and made statistically valid information difficult to collect. The county, in conjunction with support from the Board, made programming changes to its data system to include restitution-related information. This system modification required retraining of court staff that was responsible for data entry.

Judge Sarkisian then appointed the Honorable Joseph Hurley to chair a task force to implement the pilot program. The membership was composed of superior court judges handling adult and juvenile cases, superior court staff, Board staff, and representatives of county departments involved in the restitution process. Judge Hurley requested that in conjunction with the work of the task force, cases that reflected TBD orders be calendared for modification hearings to evaluate the county's existing process. The task force met for an additional year beyond the end of the pilot project.

Over four-plus years, the task force accomplished the pilot goal by establishing streamlined procedures for the modification of TBD restitution orders complete with process flow charts and documentation. These new processes allow the county to provide a greater level of service to crime victims, and county restitution data indicates that the changes made were sustainable. During the

four years of the pilot, the county obtained restitution orders in favor of the Board for an average of 36 percent of the dollars the Board paid to victims in Alameda County. However, the percentage of dollars ordered to the payout of Board-related claims grew dramatically in the two years following the end of the pilot: in Fiscal Year (FY) 2002-03, the percentage of dollars ordered to Board payout was 46 percent. This amount increased to 63 percent in FY 2003-04.

Since the inception of the pilot program, all responsibility for pursuing and tracking restitution orders was transferred to a Restitution Unit (Unit) within the District Attorney's Office. The Unit has six staff that are supervised by a Deputy District Attorney. The Unit has been successful in increasing the percentage of dollars ordered to the Board payout from the average of 36 percent over the four years of the pilot study to 74 percent in the current fiscal year. The goal of the Unit is to increase this amount to 90 percent in the next three years.

Fiscal Year	VCP Claims Payments*	Restitution Orders to the Board	Percentage of Orders to Payments
1998-99	\$1,175,274.93	\$302,711.41	26%
1999-00	\$1,692,568.54	\$498,608.37	29%
2000-01	\$1,420,949.13	\$601,049.35	43%
2001-02	\$1,859,845.51	\$846,209.24	45%
2002-03	\$1,441,379.24	\$667,249.74	46%
2003-04	\$1,221,927.20	\$771,629.31	63%

Alameda County also initiated three special projects to implement sustainable processes to modify restitution orders for cases from prior years that received no attention. These projects are described below.

STATE PRISON MODIFICATION PROJECT

This effort identified those cases where the defendant was convicted and sent to state prison without a restitution order in favor of the Board. Restitution Unit staff worked with the California Department of Corrections to locate the offenders in prison and to serve them with notice of the Board claim payouts. The inmates were given three options: (1) stipulate to the VCP claim amount; (2) do nothing and the restitution order would be entered against them in default; or (3) request a restitution hearing on the claim. Since the inception of this project, Alameda has obtained restitution orders for the Board in 69 cases totaling \$574,696. The Restitution Unit continues to use the processes developed under this effort to amend orders on behalf of the Board for offenders sentenced to state prison.

* Claims payments for which the Board should receive restitution orders.

PROBATION MODIFICATION PROJECT

The probation modification project is similar to the one described above except the offenders have been sentenced to probation instead of state prison. Restitution Unit staff locate the offenders and provide them with notice of the outstanding VCP claim amounts. The cases are then placed back on the court calendars, and the probationers returned to court so an appropriate restitution order can be entered. In 2004, Alameda obtained modifications in 51 cases totaling \$14,431.68 in orders to the Board. Again, these were cases where the criminal sentences were already imposed. Were it not for the pilot program and the efforts of the Restitution Unit, these orders would have been lost. The Restitution Unit continues to use the processes developed under this effort to amend orders on behalf of the Board for offenders sentenced to county probation.

RESTITUTION COURTS

Alameda County's restitution task force and the District Attorney's Office were not content with just obtaining victim restitution orders. They were also very concerned with collection efforts. Since the inception of the pilot program, task force and District Attorney's Office convinced the Superior Court to operate two *restitution courts* in the county. These courts are convened every Friday: one is located in the Oakland Courthouse, and the other is located at the Hayward Courthouse to serve Southern Alameda County. Both courts are staffed with personnel from the Restitution Unit. On average, the courts review approximately 100 restitution cases every week. Of these, approximately 20 percent are cases with Board orders and 80 percent are in favor of direct victims.

The defendants are required to appear in court to review their restitution status, which is being tracked by the court. If a defendant is making payments and is in compliance, he or she will receive a new court date in four to six months for further review. If they are delinquent in payments or simply not paying, the court may remand them to custody. This has been found to be extremely effective. In the Oakland Court alone it is not uncommon to collect \$3,000 or more in court on any given Friday from defendants who are delinquent in payments and want to remain in the good graces of the court.

These restitution courts are also invaluable in obtaining modifications or increases of existing orders in those cases where payouts on Board claims have increased since the date of sentence. These courts provide a weekly forum to return these cases to court and obtain modifications to existing orders and are another way that Alameda can ensure that the Board is compensated in full.

In summary, the Alameda County Restitution Unit is using the processes developed during the pilot program to increase the amount and frequency of restitution ordered on behalf of the Board. The Restitution Unit, in collaboration with other District Attorney staff and the courts, took the intent of the pilot project one further step and is collecting more restitution dollars for the Board and direct victims than anytime in its history. Those collections are increasing every year.

Sacramento County

Sacramento County reports that the pilot program was successful for the County. To implement the pilot, the County established a task force involving all parties having an interest in the administration of restitution within the county. The task force was headed by Judge Patrick Marlette and included representatives from the Courts, District Attorney's Office, Public Defender's Office, Criminal Justice Cabinet, County Bar, Probation, Sheriff, Chief Executive Officer, Department of Revenue and Recovery, and the Board.

The task force addressed the restitution order amendment process in the following order: adults sentenced to formal probation, informal probation, and state prison; and juveniles sentenced to the California Youth Authority, formal probation, and informal probation.

During the pilot meetings, the task force developed flow charts to document the process for modifying restitution orders. While the legislation indicated that the pilot program should focus on Board cases, the task force expanded the scope and developed procedures to use when any victim requests a restitution order modification. This change in scope added minimal work to the process and allowed the task force to address all victim restitution issues.

Pilot program meetings were held every two to three weeks. The task force developed the processes for amending restitution orders for formal and informal probationers and in 1999 presented the processes to the Sacramento County Home Court, which approved them. The task force believed that with the Home Court Committee's approval, there would be a more favorable reception of the requests for modifications, and this has proven to be true.

The task force also worked to identify all parties involved in the restitution order amendment process for adult offenders sentenced to the state prison. The committee had previously identified the affected parties for cases involving offenders placed on probation and continued the effort by developing procedures to use for this segment of offenders. Representatives from the

California Department of Corrections participated in the development of procedures for restitution order modifications involving the state prison inmates. The county continues to use these procedures with great success today.

As a result of the new processes developed through the pilot program, the Sacramento County Restitution Specialist (contracted position through the Criminal Restitution Compact contract between the Board and the County) has the ability to track all TBD orders, determine the status of the offender, and determine if there is a direct victim and whether the VCP has paid benefits to the victim. When this determination is made, the Restitution Specialist sends restitution notification letters to the appropriate jurisdiction including offenders in state prison and on county probation. The offenders can then (1) stipulate to the amount, (2) not respond and then the order will be entered in default, or (3) request a restitution hearing. The County continues to use the streamlined restitution processes developed and implemented during the pilot program. Below are some statistics reflecting Restitution orders to the Board since the inception of the Judges' Pilot Program. The County estimates that the percentage of Board orders will exceed 51% for this fiscal year.

Fiscal Year	VCP Claims Payments*	Restitution Orders to the Board	Percentage of Orders to Payments
1998-99	\$1,233,181.69	\$ 480,487.86	39%
1999-00	\$1,490,704.08	\$ 496,397.79	33%
2000-01	\$1,452,622.80	\$ 555,901.99	39%
2001-02	\$1,516,028.78	\$ 494,992.02	33%
2002-03	\$ 877,949.30	\$ 318,412.15	36%
2003-04	\$ 764,660.45	\$ 387,987.16	51%

* Claims payments for which the Board should receive restitution orders.

San Diego County

San Diego County approached the requirements of the pilot program by focusing on amending restitution orders via video teleconferencing for offenders sentenced to state prison. Early on, staff from the District Attorney's Office worked with the Probation Department and the Courts to identify cases that met the criteria for the pilot program, but only a small number of cases were eligible for participation. The County encountered problems when it tried to bring forth these cases for restitution orders or modification because correctional facilities that housed these offenders were not well equipped for the video teleconference function. Instead of pursuing the objectives of the pilot program through a countywide task force, the District Attorney initiated a program to enhance victim services by creating a Restitution Enforcement Unit (Unit) within the District Attorney's Office.

The Unit is tasked with increasing the effectiveness of carrying out restitution mandates by centralizing all the District Attorney's Office restitution activities under the direction and supervision of a senior deputy district attorney. The primary mission of Unit is to obtain appropriate restitution fines in every case and restitution orders on behalf of victims in every appropriate case. Working with the Probation Department, the District Attorney also arranged for the assignment of a Senior Probation Officer to be co-located within the Unit. The Unit interacts with the courts, prosecutors, the Board, and crime victims' groups and was responsible for developing streamlined processes for obtaining and amending restitution orders. These processes are described below.

TBD CONVERSION PROJECT

The conversion project began in FY 2002/03. The San Diego Restitution Specialist assigned to the South Bay Branch and Juvenile Division of Probation worked closely with the deputy district attorneys and probation staff to seek monetary restitution orders on behalf of the Board from probationary offenders at review hearings. Although these efforts met initial opposition from the defense, the Specialist has been successful in securing orders on these cases. As for the other Restitution Specialists in San Diego County, when they request a TBD on behalf of the Board, they are also advocating for restitution review hearing dates to be set by the judge at sentencing hearings. They have encountered some reluctance by the Bench because many of these hearings must be removed from future calendars due to no change in the restitution case by the time of the court's review.

Currently, the Unit is in discussions with Probation to set up a process whereby the two offices will work in tandem to convert TBDs in formal probation cases by way of ex-parte orders.

VICTIM SERVICES/RESTITUTION

The collaboration among the Board, the San Diego District Attorney's Office, the Probation Department, and the Courts has substantially contributed to achieving higher quality services for victims, especially as it relates to restitution. The Court conducts restitution hearings at the time of sentencing or makes determinations based on stipulations that provide a factual basis to establish the losses sustained by victims. Judges then enter written orders providing victims with the means to enforce their rights in criminal cases.

While San Diego did not have initial success using video teleconferencing to amend TBD orders for offenders sentenced to state prisons, the Restitution Enforcement Unit has been very proactive during the last four years to provide victim assistance and ensure that restitution is ordered for all victims suffering losses as a result of crime. The county's efforts in modifying TDB orders have been met with some resistance by the courts, but the Unit has implemented other procedures as noted above to address the needs of the victims and the Board. The Unit continues to use the streamlined restitution processes it developed to obtain and amend TBD orders on behalf of the Board and direct victims.

Below are some statistics reflecting orders to the Board since the inception of the Judges' Pilot Program.

Fiscal Year	VCP Claims Payments*	Restitution Orders to the Board	Percentage of Orders to Payments
1998-99	\$2,571,669.78	\$127,709.45	5%
1999-00	\$2,588,037.47	\$301,636.61	12%
2000-01	\$1,808,433.14	\$298,045.67	16%
2001-02	\$1,730,845.97	\$274,500.00	16%
2002-03	\$1,867,092.38	\$1,310,993.13	70%
2003-04	\$1,236,432.51	\$528,263.05	43%

As noted in the above statistics, San Diego County noticed its largest percentage increase in Fiscal Year 2002/03. The County increased staff levels from two to five restitution specialists. The Board is currently working with San Diego County to determine the factors affecting the decrease in restitution impositions in Fiscal Year 2003/04.

* Claims payments for which the Board should receive restitution orders.

3 Summary

The formation of task forces to implement this pilot program provided the counties with an opportunity to review their entire restitution programs and identify issues and internal processes that affected restitution efforts, including the collection of restitution. Although the pilot program focused on the amendment of TBD restitution orders, it is evident that the new processes implemented by these three counties have enhanced the overall imposition of restitution orders to the Board, as well as victim restitution orders.

Over the four years of the pilot program, the three counties obtained more than \$17.3 million in restitution orders, including amended TBD orders, on behalf of the Board and the victims it serves. In the two and one-half years since the pilot ended, the three counties have obtained an additional \$13.7 million in restitution orders on behalf of the Board and its victims. Because of the successes achieved by these counties in this pilot program, revenue to the Restitution Fund has been favorably affected. The courts, probation departments, and county central collections are vested with the statutory authority to collect restitution debt. When restitution is not ordered by the sentencing court, either because the amount of the loss is not provided to the court or simply overlooked, the Board and victims have little or no hope of ever being repaid by the offender.

The ultimate goal of this pilot program was for each county to establish a streamlined administrative process for the modification of TBD restitution orders, and this was achieved. Each of the three counties developed processes that may be adopted by any county interested in enhancing its restitution program. The Restitution Specialists in the three counties have also shared their processes with the Restitution Specialists from the rest of the Board's Criminal Restitution Compact counties. In addition, the Board has compiled the restitution resources from these three counties onto a CD and makes the information available through its outreach and education program to courts, deputy district attorneys, probation officers, and court clerks. The Board is hopeful that by sharing the streamlined restitution processes, other counties and victims statewide may benefit from the lessons learned in the pilot program.